

Report on Miami-Ft. Lauderdale, FL

Media Advertising Markets

**Traditional Media Revenue Share and Concentration Analysis
in Support of the Request For Waiver of Station WSFL(TV)**

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Introduction.

This Report is submitted by Mark R. Fratrik, Ph. D., Vice President, BIA Financial Network. BIA Financial Network (BIA \textit{fn}) is a financial and strategic consulting firm specializing in the media and communications industries. A copy of Dr. Fratrik's vitae is attached at the end of this report, establishing his qualifications to collect and evaluate media advertising data, as well as the presence of media outlets in the Miami-Ft. Lauderdale DMA.

On behalf of WSFL (TV), the *South Florida Sun-Sentinel* and its parent, Tribune Company ("Tribune"), we are providing an analysis of the traditional media in the Miami-Ft. Lauderdale DMA with respect to the advertising revenue share and concentration of the Miami-Ft. Lauderdale media marketplace. We have looked specifically at the combination of WSFL(TV), and the *South Florida Sun-Sentinel*, a daily newspaper published in Miami-Ft. Lauderdale. In this Report, we compare estimated revenue shares of the Tribune Properties in the Miami-Ft. Lauderdale DMA with other media properties in the Miami-Ft. Lauderdale DMA. We also compare the revenue shares of the Tribune Properties in the Miami-Ft. Lauderdale DMA with the estimated revenue shares of the market revenue leaders in other top 10 DMAs in the United States¹, and the average of the market revenue leaders in the nation as a whole. We also assess concentration in the Miami-Ft. Lauderdale DMA, and compare that level of concentration to the average of the top 10 DMAs, and the average concentration of all traditional media markets in the nation. With respect to each of these analyses, we look at the past six-year history in the Miami-Ft. Lauderdale DMA to assess the trends in concentration trends. Finally,

¹ The top-10 DMAs are (in order): New York, NY; Los Angeles, CA; Chicago, IL; Philadelphia, PA; Boston, MA; San Francisco-Oakland-San Jose, CA; Dallas-Ft. Worth, TX; Washington, DC; Atlanta, GA; Houston, TX.

we have worked with Tribune to confirm the various “voice” counts of the media outlets in the Miami-Ft. Lauderdale DMA.

This analysis of the competition among traditional media in the Miami-Ft. Lauderdale DMA actually understates the level of competition due to the proximity of other traditional media in adjacent, abutting areas. Specifically, the West Palm Beach, FL DMA is immediately north of the Miami-Ft. Lauderdale, FL DMA with many people commuting between the two areas and with the traditional media of both markets available in many places of the adjoining market.² Consequently, there are many more competitors vying for both readers/listeners/viewers as well as vying for local advertisers than just the properties in the Miami-Ft. Lauderdale, FL DMA.

In order to facilitate the Commission’s analysis of competition and diversity in a television market, we have analyzed the three traditional media: newspapers, television stations, and radio stations. We have not included the effect of advertising and the presence of multichannel video program distributors (cable, DBS, telephone company), satellite radio, and broadband Internet access. Because this analysis does not take into account the presence of these additional competitors for audience and advertising revenue, we believe the results tend to show greater shares and greater concentration among the three traditional media than actually are achieved. As discussed more particularly below, even excluding these competitors, our study

² The larger geographic market was noted more than ten years ago in a study by Dr. Roger D. Blair, “An Economic Analysis of the Cross-Ownership of WZLZ and the Sun Sentinel,” August 1, 1996 originally submitted by Tribune in its application to acquire WZLZ from Renaissance Communications Corporation. That study, attached hereto, provides both technical and market based information on a wider geographic market that should include Palm Beach County (i.e., West Palm Beach, FL DMA) in which to evaluate the competitive impacts of the combination of the Tribune Properties. (See pp. 19-21).

demonstrates that traditional intra-media and inter-media competition remains fierce in the Miami-Ft. Lauderdale marketplace. Reviewing the competitive landscape (including not only the three traditional media but also the additional competing media identified above) would demonstrate an even more vigorous and diverse media marketplace, notwithstanding various combinations in the market.

When examining the Tribune Properties' share of revenues in the Miami-Ft. Lauderdale market, one can also see evidence of vigorous competition. While Tribune's Miami-Ft. Lauderdale properties are collectively ranked first in terms of revenues in the Miami-Ft. Lauderdale market, the corresponding concentration level for traditional media is still below the threshold for Department of Justice for a highly concentrated market. Moreover, Tribune's ownership of WSFL contributes little to the market-leading share. Tribune's market share has remained somewhat constant in the past six years, indicating that the combination has little dominance, or even any market power, for Tribune. Likewise, the concentration of the market has also decreased over the past six years. Other traditional media have competed effectively against the Tribune Properties, as have other media that are not included in this study (such as cable, satellite television and radio, and Internet competitors). Furthermore, the competition from other traditional media outlets in the adjoining West Palm Beach, FL market provides even more competition. Competition can be expected to increase in the Miami-Ft. Lauderdale DMA, without material impact from the combined ownership of WSFL (TV) and the *South Florida Sun-Sentinel*.

Analysis of Traditional Media Revenue Share.

We first examined the revenue shares of the three traditional media outlets (newspaper, broadcast television and radio) in all local advertising markets, and then calculated the revenue shares by owners in the relevant local markets. We also calculated averages of the three traditional media for the top 10 markets, and for the nation as a whole, using figures for the 210 DMAs. We thus can compare the Miami-Ft. Lauderdale market to these top 10 market and national averages to determine if shares are out of the ordinary, or in some other way reflect increased or decreased competition in the market. Finally, we can analyze Tribune's share in Miami-Ft. Lauderdale since 2000 to determine whether there have been any noticeable changes that reflect the presence of market power or enhanced control over advertising dollars.

Methodology. We have used local television markets (i.e., Nielsen DMAs) as the relevant geographic markets to analyze the entire United States. All counties in the contiguous 48 states are included in one television market, as well as Hawaii, and the more populated counties in Alaska. Some Arbitron-defined radio metro areas cut across more than one television market; radio stations in those markets were assigned to the television market in which their city of license is located. Daily and weekly newspapers were assigned to the television DMA in which they are located. For revenue estimates we rely on the estimates included in the BIA Financial Network's (BIAfn) Media Access Pro™ software product. BIAfn estimates revenues for all television stations, daily and weekly newspapers, and radio stations located in Arbitron markets. Those estimates are derived from survey responses of those media outlets as well as modeling for non-responding outlets. Using our estimates for revenue at radio and television stations and newspapers, we can sum the total advertising revenue by media for the top 10

markets and for all 210 geographic markets, and compare the Miami-Ft. Lauderdale market to these averages.

Analysis. With these totals, we first can evaluate the various market shares of the three traditional media, both for national averages and within the top 10 television DMAs. Figure 1 shows the average revenue shares across all 210 markets:

Figure 1 - Revenue Shares of Traditional Media – National Average

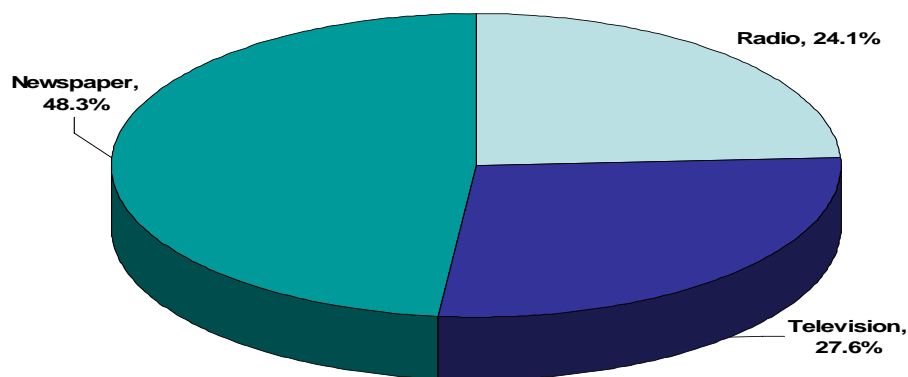
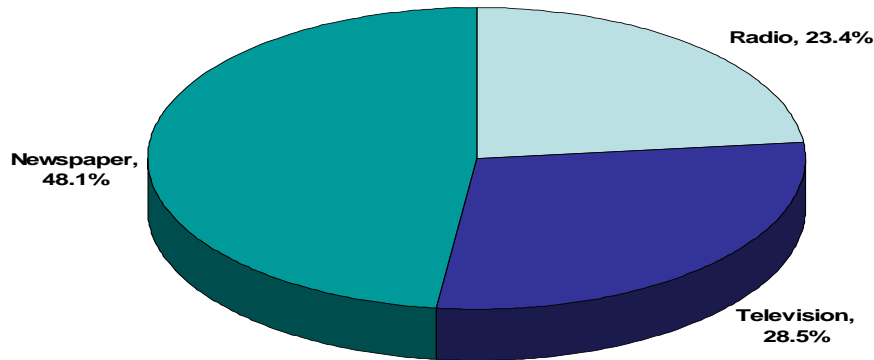


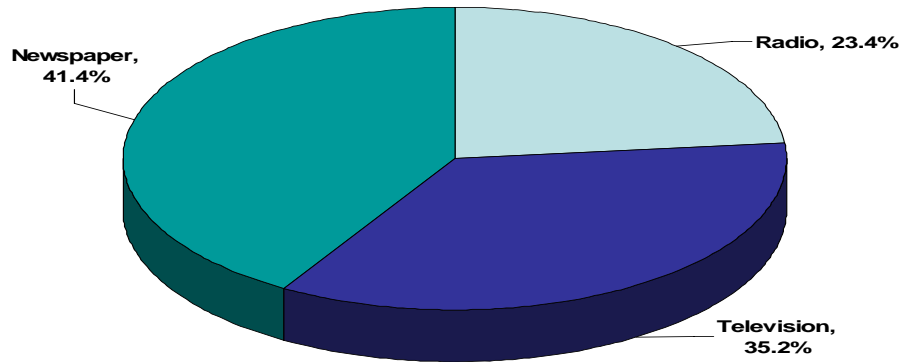
Figure 2 shows the average revenue share across the top 10 markets:

Figure 2 – Average Traditional Media Revenue Shares For Top 10 Markets



Overall, we have discovered that the shares of the three traditional media do not vary much by market size. While the past years have shown tepid growth for newspapers, local newspapers still have the largest shares of the local advertising markets among traditional media, with, on average, approximately 48% both nationally and in the top 10 DMAs. In the Miami-Ft. Lauderdale media marketplace, by comparison, the newspaper share is noticeably lower at 41.6% (with television stations claiming 35.2% and radio stations claiming 23.4% of advertising dollars). Figure 3 shows that distribution:

Figure 3 –Traditional Media Revenue Shares
For Miami-Ft. Lauderdale, FL Market



Still, the strength of all of the local media along in this area implies a vibrant level of competition. There are extremely strong and diverse television and radio markets in Miami-Ft. Lauderdale. Specifically, there are 13 full-service television stations, including three commercial duopolies, and four full-service VHF stations. One of the local television duopolies is owned by Univision, and given the large Hispanic population in this market is a strong competitive force. There are 78 radio stations in the entire Miami-Ft. Lauderdale DMA, with 42 separate and distinct owners. There are 55 radio stations with 31 separate and distinct owners, including the major radio networks, in the smaller Miami-Ft. Lauderdale radio market as defined by the FCC's geographic market rules adopted in June 2003.

Revenue Shares of Owners of Media By Market

After comparing the estimated revenues for each of these three traditional media outlets, we can next calculate and compare the total local estimated advertising revenues and resulting revenue share by the owners of these media. Some of these leading owners have local daily and weekly newspapers; others have television and radio properties in the same markets; still others own or have permitted or grandfathered combinations of these properties. By analyzing the combined revenue shares of the top media owners of these markets, we can see if these market leaders have a disproportionate share of the local market's revenues by comparison.

Across all 210 markets nationally, the market share of the largest revenue generating media owner in each market averaged 30.2% of the local advertising revenues with the second ranked media owner averaging 13.2%. In the Miami-Ft. Lauderdale media market, Tribune has the greatest combined revenue share with 25.6%, followed by the McClatchy Newspapers with 18.2%. We estimate that WSFL contributes approximately 10% of Tribune's share. Moreover, Tribune's advertising revenue share is lower than the corresponding average for the first ranked company in the average market. CBS Corporation, NBC/GE, and Univision, also have approximately 7% or greater shares. In addition, there are other owners of media outlets in Miami-Ft. Lauderdale that garner noticeable shares. The large number of media owners having noticeable revenue shares clearly indicates a strongly competitive local market.

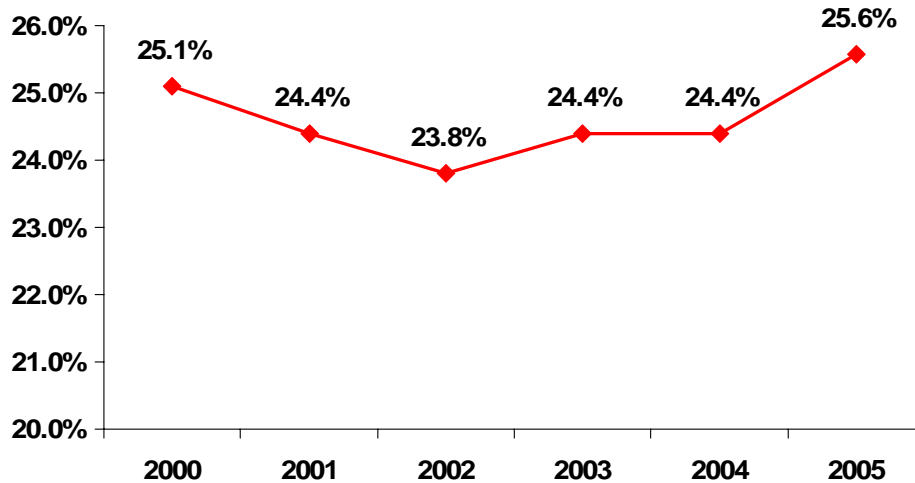
This distribution of advertising revenues indicates a healthy, competitive market for advertising dollars, and by extrapolation, for the eyes and ears of the viewers, listeners, and readers in the market. As noted above, there are 13 full-power television stations in the DMA and 55 radio stations in the FCC's defined radio market. Moreover, more than five newspaper

publishers independently circulate six daily newspapers, all competing for advertisers and readers in the Miami-Ft. Lauderdale market. Two of the major networks own their affiliates in this market and all of the major radio groups also have stations in this market. These television and radio stations as well as the local daily newspapers all have considerable resources to invest in programming and other activities.

Recent History of Tribune-Owned Properties in Miami-Ft. Lauderdale

As we saw above, for the owner of a daily newspaper in a market, Tribune's combined share of revenue does not indicate dominance or market power, even when combining WSFL (TV) with the *South Florida Sun-Sentinel*. The conclusion that the combination does not materially affect competition in the market is confirmed by the fact that the combined Tribune share generally has been holding steady. During the past few years, the Miami-Ft. Lauderdale media marketplace has become more competitive both as a result of the competition among increasingly diverse traditional media, the continuing growth of non-broadcast program outlets (such as multi-channel video and audio program distributors), and the introduction of new media sources like the Internet. Faced with this increased competition, Tribune has seen its market share essentially remain constant since 2000. Figure 4 shows the local market share of the Tribune properties for the last six years:

**Figure 4 - Historical Share of Revenue for
Tribune Properties in Miami-Ft. Lauderdale**



The Miami-Ft. Lauderdale advertising market reflects, on average, extremely competitive results both with respect to inter-media competition and competition between owners of media for shares of revenue. When examining the individual shares of the Tribune Properties, we can also see evidence of vigorous competition. Tribune's first-ranked share is below the average for first-ranked media companies in the average market. As our market concentration analysis below indicates, other traditional media have effectively competed against these properties, and that competition can only be expected to increase, both as a result of the number of strong and well-funded traditional media sources and competition from traditional cable and broadband video systems, satellite direct broadcast systems, and the Internet.³

³ In the present marketplace, owners of media properties spend a considerable amount of time comparing their properties with properties in the same media and other media. As discussed below, these inter-media comparisons are not only made between traditional media, but also between traditional media and the new media opportunities that are constantly being developed as a result of the Internet. Therefore, any analysis of traditional media market shares overstates the importance of those media's positions in today's marketplace.

Concentration Analysis Based On Advertising Markets

We now examine whether the traditional media markets are concentrated using the commonly used Herfindahl-Hirschman Index (“HHI”) employed by the Department of Justice and the Federal Trade Commission. We will be using media owners’ revenue shares for their newspapers, radio stations, and television stations in calculating each market’s HHI. Once again, this calculation overstates the concentration of these local advertising markets as it only includes the revenues generated by the traditional media. Clearly, other media -- whether they are local cable systems, local Internet websites, magazines, or even outdoor advertising -- compete with the traditional media for advertising revenues.

As we did above, our methodology will begin by examining the HHIs for the average national market, and values across the top 10 markets, to compare the Miami-Ft. Lauderdale market. We will also analyze the HHI for the Miami-Ft. Lauderdale market over the past six years, during the period of Tribune’s common ownership of WSFL (TV) and *South Florida Sun-Sentinel*. In order to analyze the national average, we have again used local television markets (i.e., Nielsen DMAs) as the relevant geographic markets (where all counties in the contiguous 48 states are included in a television market, as well as Hawaii, and the more populated counties in Alaska). As before, some Arbitron-defined radio metro areas cut across more than one television market, and radio stations in those markets were assigned to the television market in which their city of license is located. Daily and weekly newspapers again were assigned to the television market in which they are located. For revenue estimates we again relied on the estimates included in the BIA Financial Network’s (BIA $\dot{f}n$) Media Access Pro™ software product described above.

Calculation of HHIs

Using the radio and television station and newspaper revenue estimates, we have summed the total advertising revenue by media for all 210 geographic markets. With those local totals, we calculated the market shares of all owners of the three media in each market. We then calculated the HHI for each market.⁴ The average HHI across all 210 traditional media markets is 1,495, and the median is 1,373 -- both of which are classified as moderately concentrated.

Not surprisingly, there is a distinct difference in average HHIs across different size markets. As you move to smaller markets with fewer media outlets, the HHIs generally increase. There are fewer media outlets competing for advertising sales, and therefore, the media outlets in those smaller markets tend to realize larger revenue shares resulting in higher HHIs. For the top 10 markets, the average HHI is 1,175, a full 325 below the national average.

The HHI for Miami-Ft. Lauderdale is 1,286, over 200 points lower than the average market value of 1,495. The Miami-Ft. Lauderdale HHI is significantly below the benchmark for the “highly concentrated” category of 1,800, and is much closer to the “not concentrated” category of 1000. Clearly, there are many different media owners with significant shares in this market providing substantial competitive influence. Two of the big four major broadcast television networks own their local affiliates in this market (CBS and NBC), and there are three commercial duopolies. All of the major radio groups have multiple outlets in this market. The market therefore is characterized by the presence of a large number of strong competitors owning

⁴ The HHI is the total sum of the squared market revenue shares for all market participants. In this case that includes the revenue shares for all of the television and radio stations and newspapers in each of the 210 local markets. Larger numbers indicate greater concentration, and lower numbers tend to show less concentration and more competition in a market.

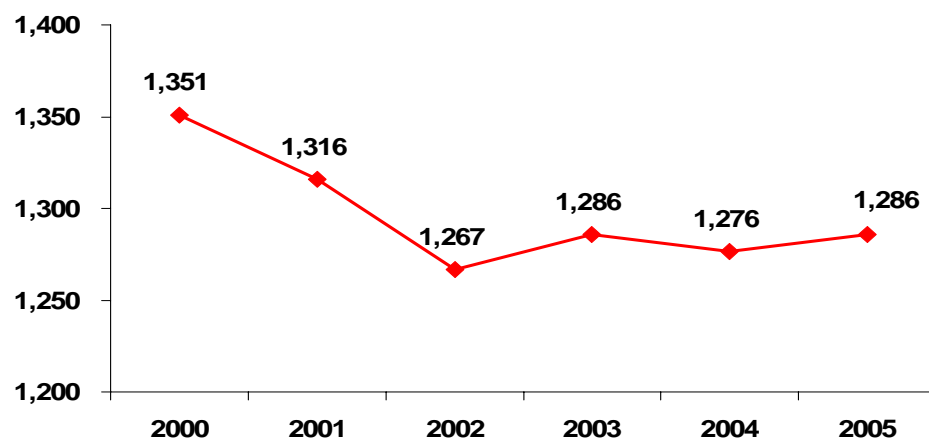
several media outlets. Most importantly, the historical downward trend suggests that even without separation of the Tribune Properties, market competition will continue to lower the HHI in Miami-Ft. Lauderdale, suggesting that the Miami-Ft. Lauderdale media market will never be highly concentrated. On the other hand, divestiture of WSFL, even to an entity with no share in the market (an unlikely event), will not bring the HHI down below 1130 in the market.

Recent History of Concentration.

The level of concentration in the Miami-Ft. Lauderdale media marketplace, as measured by the HHI, has decreased over time, especially in the most recent year. Given the vast number of outlets owned by the many media groups in the Miami-Ft. Lauderdale market, there is a strong level of competition to attract viewers, listeners, and subscribers. This competition is evidenced by the changes in the level of concentration in Miami-Ft. Lauderdale over the past six years.

Figure 5 shows the HHI for the Miami-Ft. Lauderdale DMA market over the last six years:

Figure 5 - Historical HHI of Traditional Media For Miami-Ft. Lauderdale Market



Clearly, the level of concentration over this six-year period has decreased.⁵ Even with some local media acquisitions, the formation of a television station duopoly in late 2003, and the radio station consolidations during this period, the level of concentration currently continues to be noticeably below the level of highly concentrated (1,800). In fact, over this time concentration comparing simply the *traditional media — newspapers, television and radio* — has decreased, and this market should continue not to be characterized as highly concentrated.

In summary, when compared to the national averages, the Miami-Ft. Lauderdale market is comparatively less concentrated. Currently in Miami-Ft. Lauderdale, the calculation of the HHI as it relates to only the traditional media of newspapers, radio, and television essentially indicates a market that would fit into the category of “not highly concentrated.” And as discussed below, adding alternative and new media would further dilute this level of concentration.

West Palm Beach, FL Media Outlets

In addition to the competition from the traditional media outlets available in the Miami-Ft. Lauderdale, FL analyzed above, there are many traditional media outlets located in the West Palm Beach, FL DMA who attract readers/listeners/viewers from the Ft. Lauderdale, FL market. First, there are 31 terrestrial radio stations in the FCC radio geographic market for West Palm Beach, FL. One of the radio stations actually physically located in West Palm Beach, FL is listed as home to the Miami-Ft. Lauderdale, FL radio market by the Arbitron Ratings Company (WKIS-FM, Boca Raton, FL). An additional five of the West Palm Beach, FL radio stations

⁵ The slight increase in concentration levels in 2003 was due in part to a television station acquisition by existing television operators in this market. NBC/GE acquired WSCV-TV around this time.

receive enough listening in the Miami-Ft. Lauderdale, FL radio market to reach minimum reporting levels. Many of the signals of these West Palm Beach, FL stations reach far into the Miami-Ft. Lauderdale. For example, both West Palm Beach, FL radio stations WEAT-FM and WRMF (FM) reach nearly 60% of the population in the Miami-Ft. Lauderdale, FL radio market.⁶

Similar results occur for the television industry. Three of the full-power television stations in West Palm Beach, FL (WPTV-TV, WPEC-TV, and WFLX-TV) all reach nearly 75% of the Miami-Ft. Lauderdale, FL population under their Grade B contour.

In addition to reaching populations in the Miami-Ft. Lauderdale, FL market, these radio and television stations, as well as local newspapers in West Palm Beach,⁷ all are competing for local advertisers that want to reach this larger population base. Retailers in these jurisdictions want to get their messages to people that both live in these areas and the many people that commute between these areas.⁸

Today's Media Marketplace.

The preceding statistical analysis of traditional media could have been accomplished in much the same way 30 years ago, at the time of the adoption of the FCC's newspaper-broadcast cross-ownership rule (but of course the results would have reflected much more staggering concentration). Today's media marketplace in Miami-Ft. Lauderdale reflects the vibrant competition and diversity that have come from the introduction of more television stations, more radio stations, the advent of cable television, and other technological developments. We have assisted Tribune in compiling the various media tables and "voice" counts contained in its waiver

⁶ Population reach estimates are for the 60 dBu contour and are from Dataworld, a division of BIA Financial Network.

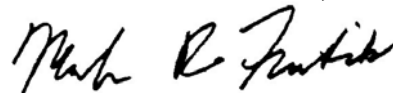
⁷ There are four daily and seven weekly newspapers published in the West Palm Beach, FL DMA.

⁸ Dr. Blair in his paper cites a number of these regional advertisers trying to reach consumers located in all of South Florida. (See pp. 21- 22).

request, and believe that these counts accurately reflect the diverse and competitive market illustrated by the revenue and concentration analysis discussed above.

But it would be very wrong to stop here, and ignore the advent of other media companies that are able to reach consumers, including cable and satellite multichannel video program distributors, satellite radio companies, and Internet portals and aggregators. These unlimited choices make the foregoing analysis of just the traditional media outlets a tremendous understatement. These new outlets have increased the level of competition in the local advertising marketplaces. In the Miami-Ft. Lauderdale media marketplace today, diversity and competition are increasing exponentially, and this expansion is not threatened by the combination of *South Florida Sun-Sentinel* and WSFL (TV).

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Curriculum Vitae

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Education

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M.S., 1978, Economics, Texas A&M University, College Station, TX
B.A., 1976, Mathematics and Economics (honors), State University of New York at Binghamton

Professional experience

2001 – Present

BIA Financial Network

Vice President

- Consulting in litigation and tax-related cases
- Developing of new broadcasting and related industry research offerings
- Speaking at industry forums

Fall 2002 – Present

The Johns Hopkins University

Adjunct Professor, *The Political Economy of Mass Communications*

1985 – 2000

National Association of Broadcasters

Vice President/Economist 1991 – 2000

- Supervised the Research and Planning Department.
- Conducted primary research about the broadcasting and related industries, used for testimony before the Congress and in filings at the FCC and other governmental agencies.
- Conducted research and studies included in publications and reports distributed by NAB.
- Presented results of primary research and other analyses at industry forums.

Director of Financial and Economic Research 1985 -- 1991

- Supervised the collection and dissemination of the annual industries financial reports

Curriculum Vitae - Mark R. Fratrik

1980 – 1985

Federal Trade Commission
Bureau of Economics
Staff Economist

- Conducted analysis of proposed mergers and other arrangements.
- Conducted analyses of industry practices to evaluate economic impact.
- Participated in litigation support in several antitrust cases.

Professional activities

Broadcast & Cable Financial Management Association – Board Member 2001-2004
American Economic Association – member
Southern Economic Association – member
Journal of Media Economics – reviewer
Journal of Broadcasting and Electronic Media - reviewer

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Testimony

Satellite Broadcasting & Communications Association of America, et al vs. Federal Communications Commission, et al, U.S. District Court, Eastern District of Virginia, deposed on May 10, 2001.

Costa De Oro Television, Inc. vs. Charter Communications, LLC, Superior Court of California, Los Angeles County, Central District, deposed on December 17, 2001.

Infinity Radio, Inc. vs. Elena Whitby, et. al., Fifteenth Judicial Circuit, Florida, testified on April 4 and 6, 2005.

CBS Broadcasting, Inc., et. al. vs. Echostar Communications Corporation, et. al., U.S. District court for the Southern District of Florida, deposed on April 1, 2003

Copyright Arbitration Royalty Panel, witness for National Association of Broadcasters, testified on May 7 –8, 2003.

Braunstein vs. KICU, et. al., Superior Court of the State of California, County of Santa Clara, deposed on February 17, 2004.

**An Economic Analysis of the
Cross-Ownership of WDZL and
the Sun-Sentinel**

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August 1, 1996

**AN ECONOMIC ANALYSIS OF THE CROSS-OWNERSHIP
OF STATION WDZL(TV) AND THE SUN-SENTINEL**

I. INTRODUCTION.

The Tribune Company proposes to acquire control of Station WDZL, a Miami, Florida television station (WDZL) currently owned indirectly by Renaissance Communications Corporation. The Tribune Company currently indirectly owns the Sun-Sentinel, a daily newspaper published in Fort Lauderdale, Florida. I have been retained on behalf of the Tribune Company to perform an economic analysis of various issues raised by the proposed common ownership of WDZL and the Sun-Sentinel with respect to certain concerns of the Federal Communications Commission (FCC) regarding diversity and economic competition.

I currently am the Huber Hurst Professor of Business and Legal Studies in the Department of Economics at the University of Florida in Gainesville, Florida. I formerly served as Chairman of the Department of Economics and as Associate Director of the Public Policy Research Center. My major fields of academic concentration are antitrust economics, industrial organization, and applied microeconomics. I received my Ph.D. in economics from Michigan State University in 1968. I have taught economics at the University of Florida since 1970, with the exception of time that I have taken for visiting professorships or leaves. During that time, I have served as a consultant on antitrust matters for the Federal Trade Commission, the Antitrust Division of the United States Department of Justice, and the

Attorneys General of Arizona, California, Connecticut, Florida, Missouri, Oregon, and Washington.¹

II. **THE GENERAL METHODOLOGY FOR THE COMPETITIVE ANALYSIS OF THE PROPOSED CROSS-OWNERSHIP OF WDZL AND THE SUN-SENTINEL.**

In evaluating the competitive significance of the cross-ownership of WDZL and the Sun-Sentinel, I have relied upon customary and standard antitrust methodology. To start, the relevant market for the analysis must be defined; the relevant market has both a product dimension and a geographic dimension. Once the relevant product and geographic markets have been defined, standard and customary antitrust methodology can be applied to determine whether market power is present and whether a market is concentrated or competitive.

A. Standard Methodology: The Product Market.

The essence of the product market definition inquiry is to identify those goods and services that are reasonably good substitutes for one another in consumption. In defining the relevant product market, one ignores geographic or locational considerations and centers on reasonable substitutability on the demand side. The idea is to capture all of the goods and services that have a high cross-elasticity of demand. The cross-elasticity of demand

¹ My academic and professional qualifications to provide expert economic analysis of the issues regarding competition and diversity posed by the proposed cross-ownership of WDZL and the Sun-Sentinel are set forth in Exhibit A to this Report.

measures the relative responsiveness of the quantity demanded of product A to changes in the price of product B. If the cross-elasticity of demand is positive -- consumers buy more of product A when the price of product B rises -- then product A and product B are substitutes.²

B. Standard Methodology: The Geographic Market.

As a general proposition, the relevant geographic market identifies the area within which sellers can turn for consumers of their goods or services and buyers can turn for suppliers of those goods or services. Again, the idea is one of reasonable substitutability, but in the geographic context the inquiry is over the sources of supply. In other words, are the product sold by Business A and the product sold by Business B substitutable in the sense that the locations of Business A and Business B are sufficiently close together that buyers can reasonably turn to Business B if they are unhappy with the price or quality of service offered by Business A? If the answer is "yes," then A and B are in the same geographic market.³

C. Standard Methodology: Market Power.

A seller is said to have market power if it can profitably raise price above the competitive level. A firm's ability to do this will be influenced by alternatives that are

² See, e.g., Roger D. Blair and David L. Kaserman, Antitrust Economics (1985) at 108; Herbert Hovenkamp, Federal Antitrust Policy (1994), at 98.

³ Blair and Kaserman, Antitrust Economics, at 107; Hovenkamp, Federal Antitrust Policy, at 108.

available to the buyers, the ability of the firm's rivals to expand their output in response to a price increase, and the size of the firm in question. As Landes and Posner have shown, one may write an index of market power as

$$L = \frac{S}{\eta + \epsilon(1-S)}$$

where S represents the share of the firm in question, (1 - S) represents everyone else's share, η is the elasticity of demand, and ϵ is the elasticity of supply.⁴

Intuitively, these relationships make sense. As its market share rises, a firm's ability to deviate from competitive price levels increases. This is consistent with the usual inference regarding the importance of market share as an indicator of market power. To the extent that market share of sales provides an indication of the firm's share of capacity, it will provide an indication of the firm's ability to control output in the market. This, in turn, provides a means of influencing price. Thus, all else being equal, market share is indisputably important in assessing market power. In cases where a firm's market share is less than 30 percent, it is extremely unlikely that the firm will have any meaningful market power. For example, the Supreme Court has held that a market share of 30 percent was insufficient as a matter of law to confer market power on a firm.⁵

⁴ William M. Landes and Richard A. Posner, Market Power in Antitrust Cases, 94 Harvard Law Review 939 (1981).

⁵ Jefferson Parish Hospital District No. 2 v. Hyde, 466 U.S. 2 (1984); see Antitrust Law Developments, ABA Antitrust Section (3d Ed. 1992), at 213-14 ("a market share of less than about 40% virtually precludes a finding of monopoly power").

Market share alone also is not dispositive; the elasticity of demand is also important. The more elastic the demand, the less able a firm is to deviate from competitive pricing. This rings true because the elasticity of demand measures the relative responsiveness of the quantity demanded to changes in price. When demand is relatively elastic, buyers will substantially decrease the quantity purchased when price increases. In effect, buyers will substitute other products, limiting the firm's ability to increase price.

The elasticity of rivals' supply is also important because it measures the ability of the firm's rivals to expand output in response to a price increase. The more elastic the rivals' supply, the less able the firm will be to raise price because any price increase will elicit a substantial increase in output. This increase in output will defeat to some extent the firm's efforts to increase price by restricting its own output.

In summary, in order to assess the power of WDZL and the Sun-Sentinel, once under common ownership, to raise the price of their product in the relevant geographic market, one must have data on (1) their combined market share, (2) the elasticity of demand for advertising, and (3) the elasticity of supply of rivals in the advertising market.⁶ In instances where a firm's market share is insubstantial, it can have no market power. As discussed above, in Hyde, the Supreme Court found that a market share of 30 percent was

⁶ In Federal Antitrust Policy, at page 82, Hovenkamp points out that "in order to estimate a firm's market power we must gather some information not only about a firm's market share, but also about the demand and supply elasticities."

insufficient to confer market power.⁷ Similarly, in instances where the firm's rivals can readily expand their outputs, the subject firm's efforts to restrict output will be frustrated.

D. Standard Methodology: Market Concentration.

Due to its prominence in the Department of Justice (DOJ) and Federal Trade Commission (FTC) Merger Guidelines, the Herfindahl-Hirschman Index (HHI) has become a statistic of choice for summarizing concentration in a market.⁸ The HHI is calculated as the sum of the squared market shares of the participants times 10,000:

$$HHI = \left(\sum_{i=1}^N s_i^2 \right) (10,000)$$

where s_i is the share of firm i , N is the number of firms, and Σ is the summation operator.

In an effort to reduce uncertainty regarding the enforcement policy of the DOJ and FTC these agencies published a set of horizontal merger guidelines utilizing an HHI

⁷ Hyde, supra, 466 U.S. 2 (1984).

⁸ It should be remembered that the HHI is just a summary statistic. While it is useful in conveying some information about concentration, it does not correlate perfectly with economic performance. In some markets, concentration will be high, but intense economic rivalry will produce prices and outputs that approximate competitive levels. In other concentrated markets, there may be an absence of intense rivalry with prices and outputs that are near the monopoly level. In other words, in a highly concentrated market, one may observe noncollusive outcomes that span the spectrum from competition to monopoly.

analysis.⁹ The general enforcement standards are couched in terms of HHI statistics based on a belief that highly concentrated markets may perform poorly in an economic sense. The Guidelines for horizontal merger enforcement are set forth in Section 1.51:

- a) Post-Merger HHI Below 1000. The Guidelines regard markets in this region to be unconcentrated. Mergers resulting in unconcentrated markets are unlikely to have adverse competitive effects and ordinarily require no further analysis of the proposed combination.
- b) Post-Merger HHI Between 1000 and 1800. The Guidelines regard markets in this region to be moderately concentrated. Mergers producing an increase in the HHI of less than 100 points in moderately concentrated post-merger markets are unlikely to have adverse competitive consequences and ordinarily require no further analysis of the proposed combination. Mergers producing an increase in the HHI of more than 100 points in moderately concentrated post-merger markets may raise significant competitive concerns, depending on an analysis of the factors set forth in Sections 2-5 of the Guidelines.
- c) Post-Merger HHI Above 1800. The Guidelines regard markets in this region to be highly concentrated. Mergers producing an increase in the HHI of less than 50 points even in highly concentrated post-merger markets are unlikely to have adverse competitive consequences and ordinarily require no further analysis of the proposed combination. Mergers producing an increase in the HHI of more than 100 points in highly concentrated post-merger markets potentially raise significant competitive concerns, depending on an analysis of the factors set forth in Sections 2-5 of the Guidelines. Where the post-merger HHI exceeds 1800, it will be presumed that mergers producing an increase in the HHI of more than 100 points are likely to create or enhance market power or facilitate its exercise. The presumption may be overcome by a showing that the factors set forth in Sections 2-5 of the Guidelines make it unlikely that the merger will create or enhance market power or facilitate its exercise in light of market concentration and market share.

It thus is only in cases where the post-merger market structure is highly concentrated and the change in concentration is fairly substantial that the DOJ or the FTC presumes an

⁹ Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, April 2, 1992.

anticompetitive effect of the merger. Even in that circumstance, the presumption may be overcome by other economic evidence.

After determining the HHI and the change in the HHI due to the proposed common ownership, the antitrust enforcement agencies consider a host of other factors before reaching a conclusion on the competitive significance of a merger that raises any questions under the structural tests. For example, under Section 1.521, the DOJ and the FTC will examine changing market conditions and substitutes that have been omitted from the product or geographic market definition to see whether the HHIs overstate the competitive significance of a proposed merger.

In Section 2, the Guidelines call for an examination of a variety of factors that may inhibit or facilitate coordinated or unilateral noncompetitive behavior. With respect to coordinated behavior, the Guidelines point out that successful coordination requires (1) agreeing on the terms of coordination that are profitable to the firms involved, (2) policing the agreement so that cheating can be detected, and (3) a mechanism for punishing the cheaters. The Guidelines recognize that product heterogeneity and firm heterogeneity make agreement on terms very difficult, and that with respect to detection and punishment, speed is of the essence. If either detecting cheating or punishing it is slow, there will be greater incentives to cheat and the possibility of coordinated behavior will be greater.

In Section 3, the Guidelines call for an examination of the ease of entry into the relevant market. The easier it is to enter the market, the less likely that a proposed

combination will lead to noncompetitive pricing. This, of course, follows because supra-competitive pricing will attract entry.

In Section 4, the Guidelines explicitly recognize that common ownership may enhance efficiency.¹⁰ In this case, the benefits that flow from improved efficiency may offset any increase in market power that result from the common ownership.¹¹

III. THE COMPETITIVE ANALYSIS OF THE PROPOSED CROSS-OWNERSHIP OF STATION WDZL AND THE SUN-SENTINEL.

A. The Product Market: Advertising.

The product that WDZL and the Sun-Sentinel both sell is advertising. WDZL, a broadcast station, sells advertising time while the Sun-Sentinel, a newspaper, sells advertising space. There are other methods of advertising available, however, and there is ample evidence that these other various advertising media are reasonably good substitutes for one another. As a result, for the proper competitive analysis of the proposed cross-ownership of WDZL and the Sun-Sentinel, the relevant product market includes advertising sold by newspapers, television stations, radio stations, cable television systems, publishers of yellow pages, direct mailers, magazines, shoppers, and outdoor facilities. These advertising

¹⁰ See Oliver E. Williamson, Economics As An Antitrust Defense: The Welfare Tradeoffs, 58 American Economic Review 18 (1968).

¹¹ Finally, Section 5 deals with failing firms. If one of the parties to a merger likely would fail if the merger were not permitted, the merger may be procompetitive.

media all compete for the same advertising dollar in a significant way. In fact, one expert, Jules S. Tewlow, has characterized the competition between these different methods of advertising as "fearsome."¹²

Unfortunately, there are no studies that detail the extent to which one advertising medium substitutes for another. In part, this is due to the unavailability of sufficient data. Transaction prices paid for advertising space or time generally are not published or made publicly available. Without precise price data, one cannot accurately measure the cross-elasticity of demand. There is much evidence, however, of a more qualitative nature that suggests that all of the various media -- including broadcast stations, newspapers, cable systems, yellow pages, direct mail, magazines, shoppers and billboards, -- compete with one another.

In another study, the FCC staff implicitly recognized that television shares total advertising revenue with these alternative media.¹³ In particular, the staff compared broadcast television advertising revenues to the advertising revenues of radio stations, cable television systems, newspapers, magazines, farm publications, direct mail, business publications, outdoor, yellow pages, and miscellaneous.¹⁴ The staff's discussion of

¹² Jules S. Tewlow, Are Newspapers in Trouble? Observations on Some Trends and Development in the Newspaper Business, Harvard University Center for Information Policy Research, Aug. 1991.

¹³ "Overview of the Television Industry," Policy and Rules Division, Mass Media Bureau, Federal Communications Commission, March 1992, at pp. 5, 12.

¹⁴ Id. at p. 12.

broadcast television's share and trends in shares of the various media would have been pointless if these media were not substitutes for broadcast television.

Academic Study. Second, numerous academic studies also support the broad definition of the advertising market. For example, Owen and Wildman have examined competition among the advertising media for advertising dollars.¹⁵ Owen and Wildman conclude that most advertisers can substitute one medium for another in response to changes in prices of advertising time or space.¹⁶ With respect to network advertising, they find that there are a number of good substitutes: spot television, basic cable networks and superstations, national magazines, direct mail, billboards as well as newspapers.¹⁷ Owen and Wildman even cite an FCC study for the proposition that "spot television, radio, magazine, newspaper, and outdoor advertising constrain the prices of network advertising and that the prices networks charge for viewer exposures reflect competitive forces."¹⁸

In another study, Seldon and Jung examined four general types of media advertising: (1) radio and television broadcasting, (2) print (newspapers and magazines), (3)

¹⁵ Bruce Owen and Steven Wildman, Video Economics (1992).

¹⁶ Id. at 12.

¹⁷ Id. at 154.

¹⁸ Id. at 157 citing Entry, Jurisdiction, Ownership, and Regulation, FCC Network Inquiry Special Staff Report (1980).

direct mail, and (4) outdoor (billboards and posters). Their empirical analysis found that these various advertising media are fairly good substitutes for one another.¹⁹

Furthermore, Lilien and Kotler identify the media planning problem as selecting among the various advertising media to find the most cost-effective combination of reach, frequency, and impact.²⁰ Lilien and Kotler explain that "[i]n choosing a combination of media types, the media planner considers . . . the relative cost. On the basis of media impacts and costs, the media planner chooses specific media within each media type . . . that delivers the desired response in the most cost effective way."²¹ This can be seen as a constrained optimization problem in which the decision maker maximizes the advertising impact subject to an advertising budget constraint. Importantly, Lilien and Kotler identified the major media types to include newspapers, television, direct mail, radio, magazines, and outdoor.²²

¹⁹ Barry Seldon and Chulho Jung, "Derived Demand for Advertising Messages and Substitutability Among the Media," 33 Quarterly Review of Economics and Finance 71 (1993).

²⁰ Gary Lilien and Phillip Kotler, Marketing Decision Making (1983). It is standard in marketing textbooks to teach business students how to optimize the selection of advertising from amongst all media.

²¹ Id. at 513.

²² Id.

Using data from 1977, when cable was far less prominent than it is today, Fournier and Martin also examined the market for television advertising.²³ The central concern of their study was whether the FCC restriction on entry had insulated the incumbent television broadcasters from competition. Using various measures of concentration, Fournier and Martin could find no evidence that concentration influenced prices. An obvious implication of the evidence and conclusions supplied by Fournier and Martin is that television stations compete in a broader advertising market and that alternative media are constraining the prices of television advertising.

In another study, Economists Incorporated, a consulting firm in Washington, D.C., conducted interviews with seven advertising agency executives and one media consultant.²⁴ These executives allocated advertising budgets across media on the basis of cost-effectiveness. Important factors in decision making were effectiveness, cost per thousand, and coverage. Importantly, in response to a hypothetical increase in television prices, one or more of these executives stated that they would reallocate advertising dollars to cable, radio, newspapers, outdoor, and direct mail.

The Office of Plans and Policies of the FCC also has recognized that an array of substitutes to video advertising are available, including radio, newspapers, magazines,

²³ Gary M. Fournier and Donald L. Martin, "Does Government-Restricted Entry Produce Market Power? New Evidence from the Market for Television Advertising", 14 *Bell Journal of Economics* 44 (1983).

²⁴ Economists Incorporated, *An Economic Analysis of the Broadcast Television National Ownership, Local Ownership and Radio Cross-Ownership Rules*, May 17, 1995.

direct mail, yellow pages, and outdoor advertising.²⁵ In this same study, the FCC staff also recognized that there are alternatives to advertising that include various promotions such as coupons, conventions and trade shows, and point-of-purchase displays.²⁶

A review of the advertising trade literature confirms that media planning involves all of the various media, including broadcast, print, yellow pages, direct mail and outdoor. For example, Douglas Johnson reports that cost-per-thousand (CPM) is compared across various media by advertisers.²⁷ On this basis, many advertisers find billboards economically attractive. Rosemary Reitelberg reports that one advertising agency uses outdoor effectively rather than newspapers for promoting the products of the agency's clients.²⁸ Keith J. Kelly and Joe Mandese have reported that high prices and tight availability of television time was apt to cause a reallocation of advertising budgets to other media including outdoor.²⁹

A number of other articles support the view that all advertising, including broadcast, print, direct mail and outdoor, is substitutable. These articles, for example,

²⁵ Florence Setzer and Jonathan Levy, "Broadcast Television In A Multichannel Marketplace," Office of Plans and Policy, Federal Communications Commission, June 27, 1991, 8 FCC Rcd. 3996, 4083.

²⁶ Id. The staff's discussion of audience trends and the resultant impact on the decision of advertisers as to where to spend their advertising dollars is consistent with the constrained optimization approach examined below.

²⁷ "The Last Unavoidable Medium: Billboards," 38 Indiana Business Magazine (1994).

²⁸ Women's Wear Daily (June 16, 1995).

²⁹ Advertising Age (June 12, 1995).

compare CPMs across various media,³⁰ and examine the increased use of outdoor in non-standard ways: for discount stores,³¹ for promoting retail products,³² for grocery stores,³³ for automobiles,³⁴ for dairy foods,³⁵ and for insurance.³⁶ These examples all point to specific cases where advertising dollars are being shifted from one medium to another in the broad product market.³⁷

Empirical Anecdotes. Third, there is no doubt whatsoever that the sellers of advertising time and space recognize that they compete with one another. For example, Knight-Ridder has reported that "[a]ll of the company newspapers compete for advertising . . . with broadcast and cable television, radio, magazines, non-daily suburban newspapers, free shoppers, billboards and direct mail."³⁸ Additionally, Outdoor Systems, a major national

³⁰ Richard R. Szathmary, "The Great and Not So Great Outdoors," 144 Sales & Marketing Management 75 (1992).

³¹ Teresa Andreoli, "From Retailers To Consumers: Billboards Drive Message Home," 33 Discount Stores News 14 (1994).

³² Ann Marie Kerwin, "Retail Wears Outdoor Crown," Inside Media 6 (February 2, 1994).

³³ Terry Hennessey, "Larger Than Life," 73 Progressive Grocer 55 (1994).

³⁴ Riccardo A. Davis, "Chrysler, VW Year For Outdoors," Advertising Age (Special Report) S-4 (1993).

³⁵ Jeff Reiter, "The Great Outdoors," 91 Dairy Foods Magazine 37 (1990).

³⁶ Lisa Marie Petersen, "Outside Chance," 2 MEDIAWEEK 20 (1992).

³⁷ Echoing the academic literature, Jody Token, Do-It-Yourself Retailing (June 1993), points out that the "problem retailers face is how to allocate precious advertising funds." The author advises that "the right media mix is the one that brings you the biggest return for your money."

³⁸ Knight-Ridder, 1993 SEC Form 10-K, at p. 7.

billboard company, "competes in each of its markets with other outdoor advertisers as well as other media, including broadcast and cable television, radio, newspapers and direct mail marketers."³⁹

It also is instructive to observe that all of these media develop promotional materials to compete with one another. For example, I am aware that the Yellow Pages Publishers Association develops competitive information on television, newspapers, radio, magazines, outdoor, and direct mail for its members. I am also aware that POA Acquisition Corporation, a large outdoor advertising firm in the Orlando area routinely arms its sales personnel with standardized sales tools that compare the cost effectiveness of billboard advertising to other media. These efforts are clearly aimed at moving advertising dollars from other media to outdoor.

Although a large-scale, systematic survey of all major advertisers is beyond the scope of this analysis, it also is instructive to examine the behavior of several important advertisers in the Miami-Fort Lauderdale-West Palm Beach area. For example, I am aware that Office Depot allocates its advertising budget to at least five media: 58 percent to network cable, 25 percent to other media such as in-stadium displays, seven percent to network television, five percent to radio, and five percent to newspaper. Sunglass Hut, on the other hand, primarily uses outdoor advertising (85 percent), but also uses radio (10 percent) and magazines (5 percent).

³⁹ Outdoor Systems, 1993 SEC Form 10-K at p. 6.

It is also instructive that both the Sun-Sentinel and WDZL act in a manner that reflects competition against all forms of advertising, including the Yellow Pages, direct mail, and outdoor advertising. Attached to this Report as Exhibits B and C are statements from management personnel at WDZL and the Sun-Sentinel that reflect their competitive approach to sales of advertising. In both cases, WDZL and the Sun-Sentinel solicit advertising competitively against not only other broadcast stations, cable television systems, and newspapers, as has been presumed, but also against producers of Yellow Pages, direct mail and outdoor media.

The Sun-Sentinel has created promotional materials specifically directed to cross-sell against other advertising media, including but not limited to outdoor, Yellow Pages, direct mail, weekly newspapers, radio and television. A close review of two samples of this material illustrates the intense nature of competition in the advertising product market. The Sun-Sentinel has created a presentation entitled "Weaknesses Inherent in Outdoor Advertising" that highlights the advantages that advertising in the newspaper has over outdoor advertising. The presentation is clearly directed at either reducing outdoor advertising's share of a given promotional budget (by noting that outdoor advertising "is not effective when relied upon as the sole source of advertising") or eliminating it entirely (by noting "What billboards can deliver -- image and color impact -- can be obtained through various newspaper products that are specifically designed for image advertising and color reproduction. So newspapers can offer the advantages of outdoor display without any of the disadvantages.")

The second presentation, entitled "Put Your Listing in the Yellow Pages, And Your Advertising in the Sun-Sentinel," is directed at reducing or replacing entirely the advertising dollars spent in the Yellow Pages. The presentation highlights intense price competition between media by highlighting that the cost of a quarter page advertisement in the Yellow Pages is the equivalent of 11 quarter page advertisements in the Sun-Sentinel. The presentation also challenges some of the presumed benefits of advertising in the Yellow Pages by highlighting that the Sun-Sentinel, rather than the Yellow Pages, is the primary source of advertising referred to most frequently by 10 times the number of people that use the Yellow Pages. Finally, the presentation highlights the Sun-Sentinel's strengths by highlighting the ability to change copy and target to an audience as compared to a single advertising purchase in the Yellow Pages.

This promotional material demonstrates the intense competition between media. The material supports the conclusions of academic literature and the Office of Plans and Policy study cited above concluding that the advertising product market is a broad one.

Finally, the fact that each medium is not, at any given moment, a perfect substitute for every advertising message or objective is economically irrelevant. The crucial fact from an economic perspective is that rival advertising media continually monitor and cross-sell against each other. In a market with such intense rivalry, there is little chance that any competitor could successfully implement a non-transitory non-trivial price increase above the competitive price. As noted in the Smith Declaration, "cost efficiency is a key consideration for most advertisers and they frequently move business from one medium to

another." Given this highly elastic demand, and the highly elastic supply market illustrated above, the economically relevant advertising product market includes television, radio, cable television, newspapers, Yellow Pages, direct mail, magazines, outdoor and interactive.⁴⁰

B. The Geographic Market: Dade, Broward and Palm Beach Counties.

For advertising, the relevant geographic market is quite broad.⁴¹ As an initial matter, the facts demonstrate that WDZL and the Sun-Sentinel both serve Dade, Broward and Palm Beach Counties. The map at Exhibit D shows that the Grade A contour of WDZL covers the entire Miami area and extends south to Homestead. Going north, the Grade A contour covers all of Broward County and extends well into Palm Beach County. For its part, the Sun-Sentinel and its various associated daily, Sunday, weekly and monthly publications have a circulation area that includes Dade, Broward, and Palm Beach Counties.

⁴⁰ While at a theoretical level this product market is more expansive, I will focus on this product market for the purposes of this report.

⁴¹ In fact, the relevant market may well be national in scope. Demands for advertising time and space by national, regional, and local advertisers all press on the limited time and space that suppliers have available. As a result, these forces of demand and supply cause the various geographic areas to be interrelated. For example, a local advertiser may increase its expenditures on local newspaper advertising. This has ramifications for other newspaper advertisers. If rates rise as a result, this will cause budget reallocations to the rival media. As some money shifts to outdoor, this will influence both local and national outdoor supply. Similarly, as some advertisers turn to television and radio, this will influence both national and local suppliers of television and radio time. The logic of the interrelationships does not mean that someone who wants to sell a used car through a classified ad in the Miami Herald is apt to shift to a radio spot in St. Louis or a national spot on CBS. What it does mean, however, is that the various segments of the market are linked together and that the forces of supply and demand have wide ranging impact.

The statements provided by WDZL and the Sun-Sentinel, Exhibits B and C, also support the conclusion that the geographic market includes Dade County, Broward County, and Palm Beach County. WDZL clearly solicits advertising purchases from businesses in all three of these counties. Similarly, the Sun-Sentinel solicits advertising from businesses in all three of these counties. Moreover, the Sun-Sentinel also assigns specific personnel to cover the news and issues that are local and particular to Dade County, Broward County, and Palm Beach County. See Exhibit C. Logic, in addition to my economic analysis, compels the conclusion that the geographic market can be no smaller than the combined areas of Dade, Broward, and Palm Beach Counties.

There are several other pieces of evidence that illustrate that the geographic market is at least as large as Dade, Broward and Palm Beach counties. First, the Grade A contours of WDZL (Dade) and WFLX (Palm Beach) overlap quite substantially. These television stations are carrying advertising messages into all three counties. An advertiser can use either television station to get substantial coverage of all three counties. Within this area, there are numerous television stations, cable systems, radio stations, newspapers, weeklies, shoppers, billboards, Yellow Pages, and the like that are competing for the advertising dollar. When the Sun-Sentinel, for example, competes for advertising business with the Yellow Pages, this influences prices and quantities in the Sun-Sentinel generally. This, in turn, has an impact on prices and quantities for television, radio, and cable time. The Miami Herald has a substantial presence in Broward county, which puts it in head-to-head competition with the Sun-Sentinel, which is in head-to-head competition with the Palm

Beach Post. As a result, price and quantity decisions in Dade county have a direct impact on price and quantity decisions in Palm Beach county.

The promotional materials developed by the Sun-Sentinel clearly show that it competes in Miami (Dade) and West Palm Beach (Palm Beach). The Sun-Sentinel's spanish language publication, Exito, aggressively markets itself in Dade County. Exito's main offices, including its sales staff, are located in Dade County. The Sun-Sentinel has produced a marketing presentation that compares Exito's reach to that of the Hispanic radio stations in Miami. Exito's performance is also compared to that of the Hispanic television stations in South Florida. These presentations vividly illustrate that the Sun-Sentinel is an active, aggressive competitor in all of South Florida. Thus, the Sun-Sentinel's presence links these three counties.

Scarborough data also show that these three counties are in the same market. Most of the major sports teams and major entertainment events advertise to and regularly draw from Dade, Broward and Palm Beach. For example, substantial numbers of fans from all three counties attend Dolphins football games, Miami Heat basketball games, and Florida Marlins baseball games.

In addition, major advertisers seek business from the entire Dade-Broward-Palm Beach area. Car dealers such as Mullinax Ford (in north Broward) and Kendall Toyota (in south Dade) draw customers from and advertise in all three counties. Tourist attractions such as Grand Prix Race-A-Rama (Dade) and Rapids Water Park (West Palm Beach) also

advertise in all three counties. These firms are competing in the three counties and buying advertising time and/or space in all three.

Thus, these three counties -- Dade, Broward, and Palm Beach -- are inextricably linked together in a market. It would make no sense to sub-divide this area. To do so would be inconsistent with economic reality.

C. The Analysis Of The Market.

The various sources and amounts of advertising for Dade, Broward and Palm Beach counties, along with the percentage share held by WDZL and the Sun-Sentinel publications, are displayed in Exhibits E and F. Exhibit F has been provided only as an accommodation to the FCC's decision in the Disney/CapCities case which inexplicably focused on an advertising product market that only included television, radio, cable and newspapers. In my opinion, there is no valid economic basis to support this product market definition. The information reflected in these exhibits was compiled from an array of sources under my supervision and at my request. In addition, specific competitors were identified and estimates of their market shares were made. These efforts resulted in data that I used to evaluate the competitive significance of the proposed cross-ownership of WDZL and the Sun-Sentinel.

I received reliable estimates of the market shares of competing television stations, radio stations, daily newspapers, cable systems, and yellow pages. I treated all

radio stations with common ownership as a single entity. Cable television systems were treated similarly. The estimate of total advertising revenue of the non-daily newspapers was allocated on the basis of each newspaper's circulation. The direct mail suppliers are highly diffused, but I had specific estimates for Advo and Harte Hanks. In order to be conservative, I assumed that the remaining firms were just a bit smaller than Harte Hanks. I had no firm-specific data on outdoor advertising, so I treated outdoor as a single entity. Similar treatment was accorded to the interactive revenue. Thus, in every instance, I made assumptions that biased the HHI upward.

Nonetheless, concentration in the South Florida market is still low; market shares are not very large and there are a substantial number of competitors in the market. I have calculated HHIs for four different possible definitions of the relevant market. First, defining the product market as television, radio, cable television, newspapers, yellow pages, direct mail, magazines, outdoor, and interactive advertising and the geographic market as Dade, Broward, and Palm Beach Counties, the HHI is 841. According to the Merger Guidelines, the antitrust enforcement agencies consider such markets to be unconcentrated and ordinarily do no further analysis. Cross-ownership of WDZL and the Sun-Sentinel will increase the HHI by 40 to 881, which is still in the unconcentrated range. Thus, for the agencies charged with protecting competition, cross-ownership would not trigger any concern. Moreover, the combined market share of WDZL and the Sun-Sentinel is less than 14 percent.

Second, using the same product market, but eliminating Palm Beach County from the geographic market, the HHI is 994, which is still unconcentrated. The combined market share of WDZL and the Sun-Sentinel would be 14.7 percent, which is too small to confer any market power. Cross-ownership of WDZL and the Sun-Sentinel will increase the HHI by 54 to 1048. Technically, this puts the market into the moderately concentrated range, but as the Merger Guidelines explain, the enforcement agencies recognize that threshold is not as precise as it appears. As a result, "[o]ther things being equal, cases falling just above and just below a threshold present comparable competitive issues." Moreover, as the Merger Guidelines indicate, the enforcement agencies ordinarily will be unconcerned with an HHI of 1048 and a change of only 54. The market is still largely unconcentrated and the change is so small that no market power could result from the proposed combination.

Third, based on a product market consisting of radio, television, cable and newspaper advertising, I examined the HHI for Dade, Broward, and Palm Beach Counties. In this case, the HHI is 832. Cross-ownership of WDZL and the Sun-Sentinel will increase the HHI by 80 to 912. The combined market share of WDZL and the Sun-Sentinel is 18.9 percent, which is too small to confer any market power. Thus, the market remains unconcentrated and of no competitive concern to the agencies charged with antitrust enforcement.

Finally, I used the more limited product market and reduced the geographic market to include only Dade and Broward Counties, even though this market does not in

either respect reflect the proper market for analysis. For this market, the HHI still is only 1098, which is just barely in the moderately concentrated range. Cross-ownership of WDZL and the Sun-Sentinel will increase the HHI in this most narrowly defined market by 106 to 1205. In this case, the combined market share of WDZL and the Sun-Sentinel is still only 19.8 percent, which is not sufficiently large in this market to confer market power.

Even in this case, competitive concerns should not be triggered under the Merger Guidelines. Section 2.0 of the Guidelines explicitly recognizes that "market share concentration data provide only the starting point for analyzing the competitive impact of a merger." For a number of reasons, the factors set forth in Sections 2 through 5 of the Guidelines reveals that there is, in fact, no competitive concern in the present case.

First, Section 2.0 points out that the smaller the percentage of total supply that a firm controls, the more severely it must restrict its own output in order to produce a given price increase, and the less likely it is that an output restriction will be profitable. In this instance, the combined market share of WDZL and the Sun-Sentinel is only 19.8 percent which is well below 30 percent that the Supreme Court found insufficient to confer market power in Hyde. This share is far too small to pose an anticompetitive threat. If WDZL and the Sun-Sentinel restricted output and no one else did anything, it would lose the profit on the sales not made while the benefit of the resulting price increase would be diffused throughout the market. Thus, WDZL and the Sun Sentinel would bear all of the costs of restricting output but receive only a portion (about 19.8 percent) of the benefits. Moreover, it is unlikely that rivals would do nothing. Advertisers could turn to other television stations

(many with higher ratings), cable, radio, and other newspapers (the Miami Herald, for example, has a more substantial presence) in the market. These rivals would benefit by soliciting the former customers of WDZL and the Sun-Sentinel.

Second, Section 2.1 points out that when the DOJ and the FTC examine the potential for coordinated behavior, they "examine the extent to which post-merger market conditions are conducive to reaching terms of coordination, detecting deviations from those terms, and punishing such deviations." One should not underestimate the complexity of reaching any agreement among the market participants. There are still seven other English language television stations, more than 18 radio groups, 20 cable systems groups, and three other daily newspapers serving Dade and Broward counties. In addition, these firms do not supply a homogeneous product. Differences across products make agreement on terms complicated because prices have to change by varying amounts. Product heterogeneity is specifically recognized in the Guidelines (Section 2.11) as a factor that impedes successful coordination.

Third, the ability of other firms to adjust capacity in the event of an output restriction by the merged firm is also recognized as a limiting characteristic (Section 2.22). Rival newspapers can adjust the space available for advertising almost instantly through decision on the number of pages to print and how much news to include.

Fourth, one must also remember that there are a variety of substitutes that have been omitted from the product market definition: yellow pages, outdoor, direct mail,

and magazines. In many cases, a ready substitute for an advertising insert in the newspaper is direct mail. Outdoor and magazines provide a substitute for television advertising of branded products such as automobiles. By eliminating some of these substitute media from the product market, we have increased the demand elasticity for the media that were included. The result is a reduction in the ability to behave noncompetitively.

Fifth, the Guidelines specifically recognize that mergers may result in efficiencies that are procompetitive (Section 4). The cross-ownership of WDZL and the Sun-Sentinel will create efficiencies that permit expanded local news programming on WDZL.

For all these reasons, cross-ownership of WDZL and the Sun Sentinel would not appear to pose any competitive risks.

IV. DIVERSITY IN VIDEO PROGRAMMING.

The FCC has long justified its regulation of broadcast and broadcast station ownership on the theory that there is scarcity in the number of available stations on the airwaves and that as a result of this scarcity, market forces will not ensure that programming is diverse. Precisely what is meant by diversity is somewhat elusive. Reed Hundt, FCC Chairman, has identified four different concepts of diversity: outlet diversity, source diversity, voice diversity, and program diversity.⁴² Since the FCC's articulated concern

⁴² Speech by Reed Hundt to the American Bar Association, Washington, D.C., March 28, 1996.

with diversity is focused on the interests of the viewership, the most important diversity concepts in this context appear to be voice and program diversity. Voice diversity refers to editorial perspective and is clearly important for presenting more than one side of various social and political issues. Program diversity refers to the availability of different types of programming in a particular area.

A. A Competitive Market Will Result In A Diversity Of Programming And Viewpoint.

A competitive market for video programming will result in diversity of both programming and viewpoint without the need for governmental intervention. Under basic principles of economics, a competitive market will result in product differentiation. Where there are numerous entrants into a given market, the entrants will act rationally to maximize their profits by differentiating themselves from the incumbents. As applied to a market for shares of the viewing public, the rational supplier of video programming will "differentiate" his product, i.e., vary his programming or viewpoint, so as to capture the largest possible share of the audience. This strategy makes economic sense because larger audience shares mean larger advertising revenues.

The primary economic prerequisite for full product differentiation is having enough rival suppliers so that it is profitable to pursue each market segment. In other words, once the number of suppliers reaches a critical mass, it will be economically rational for some of them to serve niche or small market segments, resulting in a mature market with all profitable market segments served.

Just as competition in a mature market will generally result in product differentiation, a mature market for video programming will result in both viewpoint and programming diversity. A simple hypothetical will demonstrate this point. Suppose that at four o'clock in the afternoon, 90 percent of television viewers prefer to watch soap operas, and 10 percent prefer to watch other types of programming. Acting rationally, the first nine entrants into the market will compete for the 90 percent soap opera market, leaving 10 percent of the viewers unserved. As there are new entrants into the market, however, programming will be aimed at the smaller, remaining market shares until it is no longer profitable to do so. In this sense, technological developments in the market for video programming can make (and, as shown below, have made) the video programming market sufficiently competitive to result in diversity of programming and viewpoint. Sufficient growth in the avenues for supply of video programming will eliminate any functional scarcity in that market and competitive forces will necessarily result in the diversity sought by the FCC.⁴³

The FCC and the Department of Justice obviously agree with this view of competition in the video programming market because they use the HHI in deciding whether markets (including the video programming market) should be regulated. As discussed above, the HHI is simply a measure of the concentration in a market. And where the market is

⁴³ The use of the term "scarcity" is somewhat misleading in this context. As a technical economic matter, scarcity exists in any market where there is not an infinite supply. For example, there is scarcity in the salt market. Clearly, therefore, the technical definition of scarcity is not a meaningful one for purposes of justifying FCC regulations, since it could be applied to an infinite number of markets that are regulated much less intrusively, most notably the cable industry.

unconcentrated as measured by the HHI, the FCC and the Department of Justice assume that competitive forces will ensure that all segments of the market are served, i.e., that program and viewpoint diversity will be achieved.

B. Any Relevant Market For Purposes Of This Transaction Is Competitive And Diverse. "Critical Mass" In The Video Programming Market Has Been Reached.

1. National Market

Since 1969, broadcast television has expanded significantly and has become less scarce than at any time in the past. The national market for video programming is competitive and diverse. Given the number of broadcast opportunities available nationwide (i.e., UHF and VHF stations), there is no functional scarcity in that market and diversity is preserved.

Furthermore, for purposes of evaluating whether there is "scarcity" in the broadcast market, one must consider not only the availability of broadcast, but also the availability of competing technologies such as cable, MDS, SMATV, VCR, low power television, HSD and DBS. For purposes of determining the level of competition in a particular market, a market is defined as the particular product (broadcast television) and all reasonable substitutes for it. When all of these technologies are taken into account, it is clear that there is no scarcity of opportunity to present video programming. Indeed, according to the FCC's Policy and Rules Division's Overview of the Television Industry, in

1990, the HHI for the television industry was 187, making it an extremely unconcentrated market. With such a low HHI, one can confidently state as an economic matter that programmers are competing for virtually every available market segment.

A simple review of the myriad offerings on television, cable and related services demonstrates this point. It is hard to imagine a program format that anyone will watch that is not available. In Miami, for example, there is a large Hispanic population and we find Spanish language programming. In Honolulu, there is Japanese language programming. As tastes and interest vary from one locale to another, the programming responds. This is not to say that there is "enough" of certain types of programs that some deem more worthy than others of being aired. But the current array of programs is what the market dictates should be provided.

2. South Florida Market

The South Florida market is also extremely competitive and provides viewers with a wide array of programming. One study indicates that the all daypart HHI for Miami is in the unconcentrated range. In re Review of the Prime Time Access Rule, 11 FCC Rcd 546 (1995) Table D-1. For purposes of illustrating the range of viewing options available in this market, in Exhibit G, I have attached an annotated program grid for Miami for Tuesday, July 23, 1996, at 6:00 p.m. The grid reveals an impressive array of programming available. During this time slot, there were the following numbers of program types:

<u>Program</u>	<u>Number</u>
News - English	8
News - Spanish	1
Religious	1
Movies	6
Sports	4
Children's	2
Sitcom	4
Computer	1
Teen	1
Action/Crime Drama	6
Business News	1
Music	3
Comedy	2
Game	1

In just this one time slot, there were 14 different types of programs and 43 different programs. Again, as this example illustrates, if the demand exists, the program will be provided.

C. This Transaction And The Resulting Cross-Ownership Will Not Have Any Negative Impact On Diversity.

The belief that diversification of ownership will increase content diversity rests on the assumption that the owner of multiple outlets will cause each of those outlets to present information, viewpoints and entertainment that reflects the owner's own political and artistic philosophy. This assumption is unjustified. Video programmers (and other information service providers) are in the business of supplying material that meets the public's demand for information and entertainment. Economic self-interest compels a group owner (like any owner) to target its programming at the audience shares present in its market. Any other approach would require the group owner to subsidize its programming or fail commercially.

As an economic matter, therefore, there is no reason to suppose that cross-ownership of WDZL and the Sun-Sentinel will reduce diversity. The Sun-Sentinel may decide to change WDZL's programming if it can improve profits by doing so. If WDZL was behaving in an optimal fashion, the acquisition would not lead to wholesale changes because this would reduce profits. There are indications, however, that the Sun-Sentinel will make some programming changes that will result in a net increase in news and public service programming.

In addition, there are efficiencies associated with the cross-ownership of media outlets. It allows advertisers to choose between a number of commonly held media outlets, and permits the cross-owner to cut its news-gathering costs. This may allow the cross-owner to produce more news and public interest programming since those programs can be more efficiently produced by the cross-owner. In fact, the FCC staff found "that on average, co-located, newspaper-owned TV stations programmed 6% more local news, 9% more local non-entertainment, and 12% more total local including entertainment than do other TV stations."⁴⁴

I am informed that Tribune is presently considering the implementation of a number of strategies that would allow the Sun-Sentinel and WDZL share certain expenses and operations and increase WDZL's news and public service programming. For example, there are economies of scale associated with sharing of office space, security, capital equipment and computer systems. In addition, news beat reporting, assignment desk

⁴⁴ See Second Report and Order, 50 F.C.C.2d 1046, 1094, Appendix C (1975).

functions and news management can be performed jointly. Finally, human resources costs can be reduced. Obviously, these synergies are only possible where a newspaper has an incentive to share its information and resources with another entity, an incentive that can be created by cross-ownership.

There are a number of decisions of the FCC which have recognized that the substantial cost savings enable the common owner to provide more local programming and other public interest benefits that are less profitable than network/syndicated programming. For example, in US Radio Stations, L.P., 11 FCC Rcd. 5772 (1996), the FCC noted that common ownership of a television station and two radio stations in the Little Rock, Arkansas DMA would result in savings in excess of \$850,000 the first year and over \$250,000 in succeeding years, allowing the television station to initiate local news programming during a time slot in which no other station provided news and to increase radio station news programming by drawing on public affairs resources at the television station. There are many similar examples. See, e.g., New Maintain Broadcasting II Corp., 11 FCC Rcd. 2344 (1996) (\$3 million in cost savings from co-ownership of a television station and two radio stations allowing increased news, weather and live local coverage throughout the state). These examples suggest that the co-owner will in many circumstances add to the diversity of programming available rather than diminish it.